IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1579 of 2007()

CRIME NO.16/2007 OF VADANAPPALY POLICE STATION, THRISSUR DISTRICT.

PETITIONER: ACCUSED 1 AND 2.

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1. AHAMMED, S/O. POKKAKILLATH BEERAN,
   VADANAPPALLY VILLAGE, CHAVAKKAD TALUK.

2. SHAMEETHA, W/O. POKKAKILLATH BADARUDDHIN
   VADANAPPALLY VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE, VADANAPALLY.

2. CIRCLE INSPECTOR OF POLICE,CHAVAKKAD.

3. SIVAN, S/O. SANKARAN,
   KALTHOTTIKKAL HOUSE, VADANAPPALLY VILLAGE,
   CHAVAKKAD TALUK.

4. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1579 of 2007

Dated this the 29th day of May 2007

O R D E R

The petitioners are father-in-law and daughter-in-law and they face allegations under Sections 3(i)(v) and 3(i)(viii) of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act. The crux of the allegations against the petitioners is that they wrongfully obstructed the complainant from exercising his legal rights over a pathway. They allegedly obstructed the said pathway and instituted legal proceedings deliberately suppressing true facts with vexatious intent.

2. The complainant had filed a private complaint. Such complaint was forwarded by the learned Magistrate to the police and the police have now registered a crime. The petitioners apprehend imminent arrest.

3. The petitioners have come to this court with the prayer that the extraordinary inherent jurisdiction under Section 482 Cr.P.C may be invoked to bring to premature termination the proceedings in furtherance of the complaint and consequent F.I.R registered. The allegation is vexatious. The allegations do not constitute an offence at all and that at any rate, great prejudice, injustice and hardship would

result if the proceedings were not quashed. These are the submissions made before the court.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. The jurisdiction sought to be invoked is an extraordinary inherent jurisdiction. Such jurisdiction is to be invoked sparingly and in an exceptional case and that too only if the interests of justice compellingly point to the need to follow such course. The mere fact that civil proceedings has been initiated by the petitioners and temporary injunction order has been obtained is no reason to assume that an offence under Section 3(i)(v) or 3(i)(viii) will not at all lie against the petitioners. It is for the police to conduct a thorough investigation and come out with all relevant details. I have no reason to assume that the police will not conduct proper, honest and transparent investigation and will not be able to find out true facts. I have no reason to assume that the police shall not act fairly. In these circumstances, I find no reason to interdict the investigation that is going on by quashing the proceedings.

5. The learned counsel for the petitioner then airs his apprehension that the petitioners, a person aged about 63 years and a woman aged about 26 years may be unnecessarily arrested and detained in custody. Their applications for bail are not likely to be

considered on merits, in accordance with law and expeditiously. In as much as the offence is triable exclusively by a court of Session, the learned Magistrate is not likely to consider their bail application on merits and is likely to remand the accused to custody. This would result in great hardship, prejudice and loss. Failure of justice would result. The petitioners cannot seek anticipatory bail in view of the embargo in Section 18 of the SC&ST(PA) Act. In these circumstances, appropriate directions may be issued, it is prayed.

6. This court has time and again laid down that the mere fact that the offence is triable by a special/Sessions court is no reason for the Magistrates to abdicate their jurisdiction under Section 437 Cr.P.C to grant bail. The application for bail will have to be considered on merits. The Magistrate does not lack jurisdictional competence to grant bail. The position has been repeated in Ali v. State of Kerala [2000(2) KLT 280, Shanu v. State of Kerala [2000(3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.)42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250].

7. The apprehension that the bail application may not be considered on merits and expeditiously is also found to be without any basis. Every court must do the same. Sufficient general directions have already been issued in Alice George vs.Deputy Superintendent of

Police [2003(1)KLT 339]. I find no reason to assume that the learned Magistrate does not know the law or shall not follow the same.

8. In the result, this petition is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and seek bail in the regular and ordinary course after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, expeditiously and in accordance with law - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007